

110TH CONGRESS
1ST SESSION

H. R. 4049

To amend section 5318 of title 31, United States Code, to eliminate regulatory burdens imposed on insured depository institutions and money services businesses and enhance the availability of transaction accounts at depository institutions for such business, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2007

Mrs. MALONEY of New York (for herself, Mr. BACHUS, Mr. FRANK of Massachusetts, and Mrs. BIGGERT) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend section 5318 of title 31, United States Code, to eliminate regulatory burdens imposed on insured depository institutions and money services businesses and enhance the availability of transaction accounts at depository institutions for such business, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Money Service Busi-
5 ness Act of 2007”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds as follows:

3 (1) Check cashers, money transmitters, and
4 other legally authorized and regulated money trans-
5 mitting businesses (also designated as money serv-
6 ices businesses) provide a wide range of necessary fi-
7 nancial services and products to customers from all
8 walks of life, including the under-banked and urban
9 communities.

10 (2) Those services include domestic and inter-
11 national funds transfers, check cashing, money order
12 and traveler's check sales, and electronic bill pay-
13 ments.

14 (3) Regulatory guidance issued by, and expecta-
15 tions of, the Federal banking agencies and the Sec-
16 retary of the Treasury urge insured depository insti-
17 tutions to conduct reviews of money services busi-
18 nesses' anti-money laundering compliance programs,
19 placing such depository institutions in the position of
20 quasi-regulators.

21 (4) Consequently, many insured depository in-
22 stitutions have refused or closed money services
23 businesses' accounts in order either not to incur the
24 burden, risk or potential liability for undertaking a
25 de facto regulatory function, or else to avoid super-
26 visory sanctions for not exercising such oversight.

1 (5) This trend endangers the existence of legiti-
2 mate, regulated money services businesses industry
3 and the ability of such businesses to deliver financial
4 services and products.

5 (6) Loss of depository institution accounts by
6 money services businesses threatens to drive the cus-
7 tomer transactions of such businesses underground
8 through unregulated channels, including bulk cash
9 smuggling or other means.

10 (7) It is critical to the interests of national se-
11 curity that transparency of money services business
12 transactions be maintained by ensuring such busi-
13 nesses have a reasonable process to demonstrate to
14 insured depository institutions the compliance by
15 such businesses with anti-money laundering and
16 counter-terrorism financing obligations.

17 (8) Money services businesses are subject to
18 Federal money laundering and terrorist financing
19 control programs and reporting requirements as en-
20 forced by State and Federal regulators, including
21 the Secretary of the Treasury, which are authorized
22 to conduct compliance oversight and to impose sanc-
23 tions through licensing, registration or other powers.

24 (9) These State and Federal regulators have
25 committed to coordinate their supervision and en-

1 enforcement of such money services businesses obliga-
2 tions.

3 (10) Insured depository institutions and Fed-
4 eral banking regulators should be able to rely on a
5 regulatory process for conducting oversight of money
6 services businesses' compliance with subchapter II of
7 chapter 53 of title 31, United States Code, as well
8 as on a process of self-certification by legitimate
9 money services businesses that attest to such compli-
10 ance.

11 (11) Accordingly, to eliminate regulatory bur-
12 den imposed on insured depository institutions and
13 promote access by money services businesses to the
14 banking system and to give full recognition to Fed-
15 eral and State agency authority to supervise and en-
16 force money services businesses' compliance with
17 anti-money laundering and counter-terrorism financ-
18 ing obligations and their implementing regulations,
19 it is appropriate and necessary to provide for the
20 self-certification process established pursuant to this
21 Act.

1 **SEC. 3. SELF-CERTIFICATION PROCESS FOR MONEY SERV-**
2 **ICES BUSINESSES ESTABLISHED.**

3 (a) IN GENERAL.—Section 5318(h) of title 31,
4 United States Code, is amended by adding at the end the
5 following new paragraphs:

6 “(4) MONEY TRANSMITTING BUSINESS AC-
7 COUNTS.—

8 “(A) IN GENERAL.—A federally insured
9 depository institution shall have no obligation,
10 beyond the obligation of the institution to com-
11 ply with the requirements of this chapter, to
12 conduct any review of the compliance by a
13 money transmitting business (as defined in sec-
14 tion 5330(d)(1)) for which the depository insti-
15 tution maintains an account, or any agent of
16 such business, with the requirements of this
17 section if the institution has on file—

18 “(i) a certification submitted by the
19 money transmitting business that meets
20 the requirements of paragraph (5)(A); or

21 “(ii) in the case of an agent of a
22 money transmitting business—

23 “(I) the certification required
24 under paragraph (5)(B); and

25 “(II) a certification from the
26 business that the named agent is au-

1 thorized to act as the principal's
2 agent.

3 “(B) PENALTIES.—

4 “(i) CIVIL PENALTIES.—A money
5 transmitting business or an agent of any
6 such business making a material misrepresen-
7 tation in a certification referred to in
8 subparagraph (A) shall be subject to the
9 civil penalties prescribed under section
10 5321 without regard to whether such viola-
11 tion was willful.

12 “(ii) CRIMINAL PENALTIES.— A per-
13 son who knowingly makes a material mis-
14 representation in a certification referred to
15 in subparagraph (A) shall be subject to
16 penalties prescribed under section 5322
17 without regard to whether such violation
18 was willful.

19 “(C) RULE OF CONSTRUCTION.—No provi-
20 sion of this paragraph shall be construed as re-
21 quiring any federally insured depository institu-
22 tion to establish, maintain, administer or man-
23 age an account for a money transmitting busi-
24 ness or an agent of any such business.

1 “(D) RELIANCE FOR INSURED DEPOSI-
2 TORY INSTITUTIONS.— A federally insured de-
3 pository institution shall have no increased li-
4 ability under this chapter for the failure of any
5 money transmitting business or an agent of any
6 such business to comply with any provision of
7 this section and regulations prescribed under
8 any such provision to the extent that the insti-
9 tution has itself complied with the requirements
10 of this chapter and such regulations.

11 “(E) FEDERALLY INSURED DEPOSITORY
12 INSTITUTION DEFINED.—The term ‘federally
13 insured depository institution’ means any in-
14 sured depository institution (as defined in sec-
15 tion 3 of the Federal Deposit Insurance Act)
16 and any insured credit union (as defined in sec-
17 tion 101(7) of the Federal Credit Union Act).

18 “(5) PARAGRAPH (4) CERTIFICATION.—

19 “(A) MONEY TRANSMITTING BUSINESS.—
20 A certification by a money transmitting busi-
21 ness meets the requirement of paragraph (4) if
22 the money transmitting business certifies as fol-
23 lows, to the satisfaction of the Secretary:

24 “(i) The business is in compliance
25 with paragraph (1) and regulations pre-

scribed by the Secretary under such paragraph.

“(ii) The business maintains an anti-money laundering program covering all of the identified capacities through which the business acts as a money transmitting business that includes the components of the program specified in subparagraphs (A) through (D) of paragraph (1).

“(iii) The business is licensed or registered as a money transmitting business by each State—

“(I) within which the business operates as a money transmitting business; and

“(II) which requires such licensing or registration.

“(iv) The business is registered with the Secretary in accordance with section 5330, and regulations prescribed under such section, and remains in full compliance with such section and regulations.

“(B) AGENTS OF A MONEY TRANSMITTING BUSINESS.—A certification by an agent of a money transmitting business meets the require-

1 ment of paragraph (4) if the agent certifies as
2 follows, to the satisfaction of the Secretary:

3 “(i) The agent is an agent of a money
4 transmitting business that meets the re-
5 quirements of clauses (i) through (iv) of
6 subparagraph (A).

7 “(ii) If applicable, the agent appears
8 on the list of agents of the money trans-
9 mitting business maintained by the busi-
10 ness pursuant to section 5330(c)(1).

11 “(iii) The agent—

12 “(I) operates as an agent for a
13 money transmitting business pursuant
14 to a written contract;

15 “(II) will act honestly and in
16 compliance with all applicable laws
17 when conducting any business as an
18 agent for a money transmitting busi-
19 ness; and

20 “(III) will immediately notify any
21 federally insured depository institution
22 to which the certification is submitted
23 of the occurrence of any material
24 change in the relationship of the
25 agent with the money transmitting

1 business, including termination or
2 suspension, or the institution of any
3 criminal or administrative proceeding
4 commenced against the agent.

5 “(iv) The agent is licensed or reg-
6 istered as a money transmitting business,
7 or as an agent of such business, by any
8 State—

9 “(I) within which the agent oper-
10 ates as an agent of a money transmit-
11 ting business; and

12 “(II) which requires any such li-
13 censing or registration.

14 “(v) The agent is not required to be
15 registered with the Secretary as a money
16 transmitting business pursuant to regula-
17 tions prescribed by the Secretary under
18 section 5330(c)(2).”.

19 (b) REGULATIONS.—The Secretary of the Treasury
20 shall prescribe such regulations as the Secretary deter-
21 mines to be appropriate to implement the amendments
22 made by subsection (a), in final form, before the end of
23 the 120-day period beginning on the date of the enactment
24 of this Act.

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